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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**MOTION FOR CORRECTION OF
COURT'S ORDER GRANTING
PLAINTIFFS' MOTION *IN LIMINE* NO. 3
RE: USE OF GOOGLE SERVICES**

The Honorable Yvonne Gonzalez Rogers

Hearing: ;January 16, 2024, 2:00 PM

Trial Date: January 29, 2024

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 60(a), Defendant Google LLC respectfully moves for correction of the Court’s December 5, 2023 order on Plaintiffs’ Motion *in Limine* No. 3 (Dkt. 1078 at 3) (“Order”). The Order makes two clerical errors. First, it grants Plaintiffs’ Motion *in Limine* No. 3 (“PMIL 3”) in its entirety “for the reasons stated on the record,” whereas, on the record at the November 29, 2023 Pretrial Conference (the “Hearing”), the Court ruled that PMIL 3 was “[g]ranted in part [and] denied in part.” Dkt. 1080, Transcript of November 29, 2023 Hearing (“Tr.”) 118: 4. Second, the Order misconstrues PMIL 3 as seeking to exclude evidence on the use of Incognito mode, but the motion seeks to exclude evidence on the use of Google web services. *See* Dkt. 1022; Dkt. 1022-7.

Google’s Motion for Correction is based upon this Notice, the Memorandum of Points and Authorities, the record at the Hearing, all pleadings on file, and any additional materials the Court deems proper to consider.

DATED: December 11, 2023

QUINN EMANUEL URQUHART &
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By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Attorney for Defendant Google LLC

MEMORANDUM OF POINTS AND AUTHORITIES

PMIL 3 seeks to exclude evidence of the use of Google web-services by the Court, Plaintiffs’ law firms, and Plaintiffs’ experts. At the Hearing, the Court ruled that PMIL 3 was “[g]ranted in part [and] denied in part”—granting the motion as to the use of Google services by the Court and Plaintiffs’ law firms, but denying it as to the use of such services by Plaintiffs’ experts. Tr. 118: 4. Due to an apparent clerical error, the Order grants PMIL 3 in its entirety, including as to Plaintiffs’ experts. The Order further appears to misconstrue the subject matter of PMIL 3 as concerning evidence on the use of “Incognito mode.” *Compare* Dkt. 1078 at 3 *with* Dkt. 1022 at 1; Dkt. 1022-7 at 1. Google respectfully requests that the Court correct the Order.¹

I. LEGAL STANDARD

Federal Rule of Civil Procedure 60(a) provides that “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). In deciding motions under Rule 60(a), the Court’s original intent is the controlling factor. *Tattersalls, Ltd. v. DeHaven*, 745 F.3d 1294, 1297 (9th Cir. 2014). The Court may invoke Rule 60(a) where a clerical error resulted in language that did not accurately memorialize the Court’s intended holding. *Id.*

II. ARGUMENT

A. The Court Should Correct the Order to Clarify that It Does Not Apply to Plaintiffs’ Experts

PMIL 3 seeks to preclude Google from referencing “any use of Google services by the Court, Plaintiffs’ counsel, and Plaintiffs’ experts.” Dkt. 1022 at 1. In its opposition, Google made clear that it did not intend to reference “any use of Google services by the Court,” but argued that Plaintiffs’ counsels’ and experts’ continued use on their *own* websites of the same Google web-

¹ Plaintiffs provided the following statement of their position: Plaintiffs defer to the Court with respect to Google’s Motion. In light of the Court’s Pretrial Order, Plaintiffs understood the Court to have reconsidered its statement on the record that it would deny Plaintiffs’ third motion *in limine* in part, with respect to expert witnesses’ use of Google web services. To the extent that the Pretrial Order in fact reflects a clerical error, Plaintiffs have no objection to an appropriate amendment.

1 services that they claim facilitate “unlawful voyeurism” is highly relevant to multiple claims. Dkt.
2 1022-7 at 1-2.

3 At the Hearing, the Court ruled that PMIL 3 was “[g]ranted in part [and] denied in part.” Tr.
4 118:4. The Court granted PMIL 3 to exclude evidence on the use of Google web services by the
5 Court and Plaintiffs’ counsel, but denied PMIL 3 with respect to evidence on the use of Google
6 services by Plaintiffs’ experts. Tr. 117: 2-4. The Court explained:

7 **THE COURT:** [...] With respect to plaintiffs’ experts, I mean, any witness
8 who talks -- who testifies, they’re fair game. I mean, look, I had Tim Sweeney
9 who admitted to using an iPhone and he was suing Apple. It’s fair game.

10 Tr. 117: 5-8. The Order, by contrast, grants PMIL 3 in its entirety, including as to Plaintiffs’
11 experts. Dkt. 1078 at 3.

12 Because the Order provides no reason for departing from the Court’s decision on the record,
13 Google contends the Order reflects a clerical error that the Court may correct under Rule 60(a). Fed.
14 R. Civ. P. 60(a) (“The court may correct a clerical mistake or a mistake arising from oversight or
15 omission whenever one is found in a[n] [] order....”); *Tattersalls, Ltd.*, 745 F.3d at 1297 (The
16 quintessential ‘clerical’ errors are where the court errs in transcribing the judgment....”); *Blanton v.*
17 *Anzalone*, 813 F.2d 1574, 1577 (9th Cir. 1987) (“Errors correctable under Rule 60(a) include those
18 where what is written or recorded is not what the court intended to write or record. The error can
19 be corrected whether it is made by a clerk or by the judge.”); *Williams v. Yamaha Motor Corp.,*
20 *U.S.A.*, 2014 WL 12607684, at *2 (C.D. Cal. Nov. 26, 2014) (“The court may invoke Rule 60(a)
21 where a clerical error resulted in language that did not accurately memorialize the court’s intended
22 holding.”) (citing *In re Jee*, 799 F.2d 532, 535 (9th Cir.1986)). Google therefore requests that the
23 Order be corrected to make clear that evidence of Plaintiffs’ experts’ continued use of Google web-
24 services may be presented at trial.

25 **B. The Court Should Correct the Order to Clarify the Evidence Excluded**

26 The Order also misconstrues PMIL 3 as seeking to exclude evidence regarding the use of
27 Incognito mode. Dkt. 1078 at 3. In fact, PMIL 3 seeks to exclude evidence of the use of the Google
28 web services that transmit the at-issue data to Google (regardless of which browser or mode is

1 used)—such as Google Analytics and Google Ad Manager. *See* Dkt. 1022 at 1; Dkt. 1022-7 at

2 1. Google requests that the Court correct this clerical error too.

3 **III. CONCLUSION**

4 Google respectfully requests that the Court correct the Order to make clear that (1) it pertains
5 to the use of Google web-services, and (2) Google may present evidence at trial that Plaintiffs’
6 experts continue to use Google web-services.

7
8 DATED: December 11, 2023

Respectfully submitted,

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10 SULLIVAN, LLP

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